

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
2-----x

3 UNITED STATES of AMERICA,

4 -against-

19 cr 916
Plea

5 YOSEF ZIEGLER,

6 Defendant.
7-----x
8

9 United States Courthouse
10 White Plains, New York

11 December 8, 2020

12 * * VIA TELECONFERENCE * *

14 B E F O R E:

15 THE HONORABLE JUDITH C. McCARTHY,
United States Magistrate Judge

17 A P P E A R A N C E S:

18 Audrey Strauss
19 Acting United States Attorney for
the Southern District of New York
20 BY: COURTNEY HEAVEY
Assistant United States Attorney
21

22 NECHELES CASSIDY LLP
23 Attorneys for Defendant
BY: SUSAN R. NECHELES
GEDALIA M. STERN
24

25 (Proceedings recorded via digital recording device)

PAMELA GRIMALDI, CRR, CLR
914.390.4053

1 THE DEPUTY CLERK: United States of America versus
2 Yosef Ziegler.

3 Counsel, please state your appearances for the
4 record.

5 MS. HEAVEY: Good morning, your Honor. Courtney
6 Heavey for the government.

7 THE COURT: Good morning, Ms. Heavey.

8 MS. NECHELES: Your Honor, Susan Necheles and Gedalia
9 Stern for Mr. Ziegler.

10 THE COURT: Good morning, Mr. Stern and Ms. Necheles.

11 And good morning, Mr. Ziegler. My name is Judge
12 McCarthy, and I'm going to be presiding over the proceedings
13 today.

14 I just want to remind all those who are participating
15 in this proceeding that the Southern District local rules that
16 prohibit -- recording or videotaping of these proceedings is
17 prohibited, so no audio or video recordings can be made of this
18 proceeding.

19 Ms. Heavey, what are we here for today?

20 MS. HEAVEY: Your Honor, we're here for the waiver of
21 an indictment, the filing of a superseding information, and the
22 plea pursuant to that superseding information.

23 THE COURT: Okay. Before we begin, I want to place
24 on the record that a CARES Act finding has been made by Judge
25 Román on November 25, 2020 that allows this proceeding to

1 proceed remotely. That CARES Act finding I believe is docket
2 No. 28 on the ECF.

3 The other thing I would like to do is make sure that
4 I have the consent of the defendant to proceed this way.

5 Ms. Hummel, I don't see the consent form in the --
6 did I miss it in the package?

7 I do have it here. Hold on one second here. I'll
8 get it before me.

9 So I have a consent form. That has been completed by
10 Ms. Stern and signed on behalf of Ms. Stern and she signed on
11 behalf of her client -- or Mr. Stern. Sorry. And I'm not
12 quite sure whose initials it is in there for Mr. Ziegler.

13 So I'm going to let counsel place on the record what
14 was done both to advise Mr. Ziegler of his rights to appear in
15 person and to proceed remotely, and that Mr. Ziegler consents
16 to proceed this way.

17 MS. NECHELES: Thank you, your Honor.

18 Your Honor, Mr. Stern, my colleague Mr. Stern, has
19 had conversations and discussed this with Mr. Ziegler and
20 Mr. Ziegler has consented. Those are Mr. Stern's initials by
21 Mr. Ziegler's name on this and the other documents as well.

22 THE COURT: Okay. So this consent form says that
23 Mr. Ziegler consents to proceed by videoconference for a
24 conference before a judicial officer, and then handwritten in
25 is "sentencing." I am not doing sentencing. All I'm going to

1 be doing today is waiver of indictment, arraignment on the
2 information, and then a change of plea.

3 May I modify this form to reflect that?

4 I didn't hear you. Is that a yes?

5 MS. NECHELES: Yes, your Honor.

6 THE COURT: Okay. Mr. Ziegler, before we proceed, I
7 just want to make sure that you do consent to proceeding this
8 way. And I'm going to put on the record how we're proceeding.

9 We're proceeding using the platform Skype for video,
10 and that allows us all to see each other. I can see you,
11 Mr. Ziegler, and you can see me; is that correct? You waved
12 hello. You need to aud -- you need to answer yes or no so the
13 recording can take that. You can see me, correct, Mr. Ziegler?

14 Excuse me?

15 THE DEFENDANT: Yes, I can see you.

16 THE COURT: Thank you.

17 And we are also using the AT&T conference service.
18 That is my virtual courtroom. That would allow other people to
19 participate in this proceeding in open court so they can watch
20 the proceeding and hear the proceeding. They can only hear it
21 on the audio. But it also allows me to put counsel and
22 defendant in a breakout room. If at any point during the
23 course of this proceeding they need to speak confidentially, I
24 can do that.

25 So Counsel, if you need that, just let me know.

1 Mr. Ziegler, if you need that, just let me know and
2 we can do that.

3 Mr. Ziegler, do you consent to proceeding this way?

4 THE DEFENDANT: Yes.

5 THE COURT: Okay. And did you give your attorneys
6 permission to sign the consent form?

7 THE DEFENDANT: Yes.

8 THE COURT: So I'm going to sign the consent form,
9 modify it to include the proceedings we're doing today, and it
10 will become part of the court record as Court Exhibit 1.

11 (Court Exhibit 1 was marked)

12 THE COURT: Now, it goes without saying, but just so
13 it's clear on the record, we are doing this because we are in
14 the midst of a global pandemic, and in order to ensure the
15 safety of all those involved, we are handling proceedings
16 remotely at this time. And that is allowed under the CARES
17 Act. And as I said, Judge Roman made a CARES Act finding on
18 this matter.

19 So Mr. Ziegler, the first thing we're going to do is
20 the waiver of the indictment and arraign you on the information
21 that I have before me.

22 I'm making an assumption, but I want to place it on
23 the record, Mr. Ziegler has had his initial appearance and has
24 been arraigned previously and assigned Judge Román to this
25 case. Is that correct, Ms. Heavey?

1 MS. HEAVEY: That is correct, your Honor.

2 THE COURT: Thank you.

3 Ms. Hummel, would you please place Mr. Ziegler under
4 oath or affirmation.

5 YOSEF ZIEGLER, having been duly sworn, testified as follows:

6 THE COURT: What is your full name, Mr. Ziegler?

7 THE DEFENDANT: Yosef Shlomo Ziegler.

8 THE COURT: And how old are you?

9 THE DEFENDANT: 30.

10 THE COURT: 30?

11 THE DEFENDANT: Yes.

12 THE COURT: And are you a U.S. citizen?

13 THE DEFENDANT: Yes.

14 THE COURT: How far did you go in school?

15 THE DEFENDANT: I went to high school. I didn't
16 complete.

17 THE COURT: Are you currently or have been recently
18 under the care of a doctor or psychiatrist for any reason?

19 THE DEFENDANT: No.

20 THE COURT: Have you taken any mind-altering drugs,
21 medicines, or pills, or consumed any alcohol in the last 24
22 hours?

23 THE DEFENDANT: I take medication for anxiety and for
24 depression.

25 THE COURT: And does any of that medication that you

1 take interfere with your ability to think clearly?

2 THE DEFENDANT: No.

3 THE COURT: Have you ever been hospitalized or
4 treated for alcoholism or drug addiction?

5 THE DEFENDANT: Hospitalized? No.

6 THE COURT: Or treated. For alcoholism or drug
7 addiction.

8 THE DEFENDANT: No.

9 THE COURT: Is your mind clear today?

10 THE DEFENDANT: Yes.

11 THE COURT: Do you understand what's happening at
12 this proceeding?

13 THE DEFENDANT: Yes.

14 THE COURT: Does either counsel have any objections
15 to defendant's competence to proceed at this time?

16 MS. NECHELES: No, your Honor.

17 MS. HEAVEY: Nothing from the government.

18 THE COURT: Thank you.

19 So I have before me a copy of the superseding
20 information in this case. And this superseding information is
21 a four-count information charging the defendant in each count
22 with bank robbery in violation of Title 18 United States Code
23 § 2113(a) and (d).

24 Counsel, have you seen a copy of this information?

25 MS. NECHELES: Yes, your Honor.

1 THE COURT: Have you gone over the information with
2 your client?

3 MS. NECHELES: Yes, your Honor.

4 THE COURT: All right. Have -- are you satisfied he
5 understands the charges?

6 MS. NECHELES: Yes, your Honor.

7 THE COURT: Do you waive the public reading?

8 MS. NECHELES: Yes, we waive.

9 THE COURT: Mr. Ziegler, do you understand the
10 charges against you set forth in this superseding information?

11 THE DEFENDANT: Yes, I do, your Honor.

12 THE COURT: Under the Constitution you have a
13 constitutional right to be charged by an indictment issued by a
14 grand jury. Instead of an indictment, these felony charges are
15 being brought against you by the U.S. Attorney's Office by the
16 filing of this information. Unless you waive indictment, you
17 may not be charged with a felony unless a grand jury finds by
18 return of an indictment that there's probable cause to believe
19 that a crime has been committed and that you committed it. If
20 you do not waive indictment, the government may present the
21 case to the grand jury and ask the grand jury to indict you.

22 Do you understand that?

23 THE DEFENDANT: Yes.

24 THE COURT: Just so we're really clear, a grand jury
25 is a group of 16 to 23 ordinary citizens that are called to

1 jury service to hear the government's evidence in criminal
2 cases and decide whether the evidence is sufficient to justify
3 bringing you to trial. In order to return an indictment, at
4 least 12 of the grand jurors must vote for the indictment,
5 finding that there's probable cause to believe that an offense
6 has been committed and that you committed it.

7 You have a right to have these charges considered by
8 a grand jury, which means that without your consent, these
9 charges could not even be brought unless approved by the grand
10 jury. But if you waive indictment by the grand jury, the case
11 will proceed against you based on the United States Attorney's
12 information just as if you'd been indicted.

13 Do you understand that?

14 THE DEFENDANT: Yes.

15 THE COURT: Ms. Hummel, could you please arraign the
16 defendant on the waiver of the indictment.

17 THE DEPUTY CLERK: Yes.

18 Mr. Ziegler, before me I have the waiver of
19 indictment which was signed by your attorneys and also signed
20 on your behalf by your attorneys. Before -- you gave your
21 attorney permission to sign this document on your behalf,
22 correct?

23 THE DEFENDANT: Yes.

24 THE DEPUTY CLERK: And did you give him or her
25 permission voluntarily?

1 THE DEFENDANT: Yes.

2 THE DEPUTY CLERK: Before having your attorney sign
3 this waiver, did you discuss it with him?

4 THE DEFENDANT: Yes.

5 THE DEPUTY CLERK: And did your attorneys explain
6 this waiver to you?

7 THE DEFENDANT: Yes.

8 THE DEPUTY CLERK: Do you understand that you're
9 under no obligation to waive indictment?

10 THE DEFENDANT: I understand.

11 THE DEPUTY CLERK: And do you also understand that if
12 you do not waive indictment and if the government wants to
13 prosecute you, it will have to present your indictment to a
14 grand jury which may or may not indict you?

15 THE DEFENDANT: Yes.

16 THE DEPUTY CLERK: And do you also understand what a
17 grand jury is?

18 THE DEFENDANT: Yes.

19 THE DEPUTY CLERK: And you've seen a copy of the
20 felony superseding information in this case?

21 THE DEFENDANT: Yes.

22 THE DEPUTY CLERK: And you waived its public reading,
23 correct?

24 THE DEFENDANT: Yes.

25 THE DEPUTY CLERK: Thank you.

1 THE COURT: Thank you, Ms. Hummel.

2 The Court finds the written waiver is knowing and
3 voluntarily made. The waiver has been accepted and will remain
4 in the court file. And this will be Court Exhibit 2.

5 (Court Exhibit 2 was marked)

6 THE COURT: For purposes, Counsel, of the waiver of
7 indictment, how does your client plead? This is just for the
8 waiver. I know we're going into change of plea in a moment.
9 So how does your client plead?

10 MS. NECHELES: Not guilty.

11 THE COURT: Thank you.

12 This case has previously been assigned to Judge Román
13 and remains with Judge Román.

14 Ms. Heavey, what's the nature of the discovery in
15 this matter?

16 MS. HEAVEY: The government has produced discovery
17 and I can go through the types of discovery.

18 THE COURT: Yes, please.

19 MS. HEAVEY: Discovery has included surveillance
20 footage from the banks, police reports regarding each of the
21 bank robberies, search warrant and evidence obtained in
22 connection with the searches of two residences and a storage
23 facility, cell site data, information from the defendant's cell
24 phone, post arrest statement, license plate reader records,
25 subpoena returns. I believe that is what I currently have as

1 the categories.

2 THE COURT: Now, Ms. Heavey, pursuant to Federal
3 Rules of Criminal Procedure 5(f), I remind the government of
4 its obligation under *Brady v. Maryland* and its progeny to
5 disclose to the defense all information, whether admissible or
6 not, that is favorable to the defendant, material either to
7 guilt or to punishment, and known to the government. The
8 government must make good faith efforts to disclose such
9 information to the defense as soon as reasonably possible after
10 its existence becomes known to the government.

11 As part of these obligations, the government must
12 disclose information that can be used to impeach the trial
13 testimony of a government witness within the meaning of
14 *Giglio v. United States* and its progeny, and must do so
15 sufficiently in advance of trial in order for the defendant to
16 make effective use of it at trial.

17 I remind you that these obligations are continuing
18 ones, and that they apply to information whether or not you
19 credit it. I further remind you that for these purposes, "the
20 government" includes any federal, state, and local prosecutors,
21 law enforcement officers, and other officials who have
22 participated in the investigation and prosecution of the
23 charged offense, whether or not such officials are still part
24 of the team, and that you have an affirmative obligation to
25 seek from those sources all information subject to disclosure.

1 Finally, I caution the government that if it fails to
2 comply with this order, any number of consequences may follow.
3 Sanctions may be imposed upon the responsible lawyer. The
4 Court could dismiss the charges before trial or vacate a
5 conviction after trial, or a guilty plea, or any other order
6 that seems just under the circumstances.

7 Ms. Heavey, do you understand these obligations and
8 confirm that you fulfilled or will fulfill them?

9 MS. HEAVEY: Yes, your Honor.

10 THE COURT: Thank you.

11 Pursuant to Rule 5(f) I will enter a written order
12 confirming the government's *Brady* obligations following this
13 proceeding.

14 I believe at this time that we can move to the change
15 of plea.

16 Counsel, is that correct? If there's nothing else I
17 need to do before that.

18 MS. NECHELES: There is a consent -- did your Honor
19 already cover the consent to proceed before a magistrate judge
20 or --

21 THE COURT: I will do that during the course of the
22 change of plea.

23 Okay. Mr. Ziegler, I want to advise you that we're
24 now going from the waiver of indictment to change of plea.
25 This is not a trial, but it's my understanding that you've

1 decided to enter a guilty plea, and this proceeding is for the
2 purpose of ensuring that you're aware of your rights in
3 connection with your plea and that any waiver of those rights
4 is knowing and voluntary prior to entering your guilty plea.

5 If at any time you do not hear or understand what I
6 say to you, please interrupt me so I can repeat and explain
7 what I've said. If you want to confer with your attorney
8 regarding anything I say, please interrupt me so that you can
9 do that.

10 Do you understand, Mr. Ziegler?

11 THE DEFENDANT: Yes.

12 THE COURT: I want to advise you that you have a
13 right to be represented by counsel throughout the entire case,
14 and you may consult with your attorney at any stage of this
15 proceeding. You also have the right to remain silent. Any
16 statement that you do make may be used against you. You have
17 this right to remain silent even if you've already made
18 statements to law enforcement officers.

19 Do you understand that?

20 THE DEFENDANT: Yes.

21 THE COURT: So we previously placed you under oath at
22 the beginning of this proceeding, and I want to remind you that
23 if you knowingly make a false statement during these
24 proceedings, you could be subject to prosecution for the crime
25 of perjury or for making a false statement to the Court, and

1 you could face a punishment up to five years' imprisonment and
2 a \$250,000 fine for committing such a crime. Such punishment
3 would be separate and apart from any sentence you may be facing
4 on the crime charged in the felony superseding information.

5 Do you understand that?

6 THE DEFENDANT: Yes.

7 THE COURT: Now, I had asked previously some general
8 questions regarding Mr. Ziegler's competence to proceed. I
9 want to ask Counsel, does Counsel have any objections to
10 defendant's competence to plead at this time?

11 MS. NECHELES: No, your Honor.

12 MS. HEAVEY: No, your Honor.

13 THE COURT: Thank you.

14 So Mr. Ziegler, this proceeding -- this part of the
15 proceeding is called a plea allocution. I want you to
16 understand that you have an absolute right to have this plea
17 allocution conducted before a United States District Judge. It
18 is the United States District Judge who will impose the
19 sanctions in this case. If you consent, then I will conduct
20 the plea allocution and I will then make a report to the
21 district judge in which I will recommend whether or not the
22 district judge should accept the plea of guilty. I will make
23 that recommendation based on the information that is brought
24 out during today's court proceedings.

25 It is important for you to understand that the Court

1 will not accept your plea unless the Court is satisfied that
2 you fully understand all of your rights and that you are, in
3 fact, guilty.

4 Do you understand that?

5 THE DEFENDANT: Yes.

6 THE COURT: Do you understand that you have an
7 absolute right to have this plea allocution conducted before a
8 United States District Judge?

9 THE DEFENDANT: Yes.

10 THE COURT: Mr. Ziegler, is it your wish that I
11 conduct the plea allocution?

12 THE DEFENDANT: Yes.

13 THE COURT: Counsel, I have before me the consent to
14 proceed before a United States Magistrate Judge on a felony
15 plea allocution, which you've signed and you've signed on
16 behalf of your client. If you could please set forth on the
17 record what you did to advise your client of his rights and
18 obtain his consent to proceed before me for the felony plea.

19 MS. NECHELES: Your Honor, Mr. Stern, my colleague,
20 [indiscernible] discussed this with Mr. Ziegler, and Mr. Stern
21 signed on behalf of Mr. Ziegler to sign his own name, and he
22 put the initials there.

23 THE COURT: Thank you.

24 I have this consent form before me. It's not dated.
25 What -- I will add the date, but you need to give me the date

1 on which it was executed.

2 MS. NECHELES: Yesterday, your Honor.

3 THE COURT: Okay.

4 MS. NECHELES: The 7th.

5 THE COURT: And what city and state was it executed
6 in?

7 MS. NECHELES: Brooklyn, New York.

8 THE COURT: Thank you.

9 Do I have your permission to add the date and modify
10 the form to include Brooklyn, New York?

11 MS. NECHELES: Yes, your Honor.

12 THE COURT: So Mr. Ziegler, what this form says is
13 that knowing you have the right to have the plea taken by a
14 United States District Judge, you are agreeing to have the plea
15 taken by me, a United States Magistrate Judge. Is that
16 correct?

17 THE DEFENDANT: Yes.

18 THE COURT: And did your -- did you give permission
19 for your lawyer to sign this form on your behalf?

20 THE DEFENDANT: Yes.

21 THE COURT: Before you signed the form, did your
22 lawyer explain it to you?

23 THE DEFENDANT: Yes.

24 THE COURT: Did anyone threaten or coerce you or
25 promise you anything in order to get you to sign the consent

1 form?

2 THE DEFENDANT: No.

3 THE COURT: Did you sign the form freely and
4 voluntarily?

5 THE DEFENDANT: Yes.

6 THE COURT: Counsel, do either of you know of any
7 reason why the waiver and consent to proceed with this plea
8 allocution before a United States Magistrate Judge should not
9 be accepted?

10 MS. NECHELES: No, your Honor.

11 MS. HEAVEY: Nothing from the government, your Honor.

12 THE COURT: Thank you.

13 I find that the defendant Yosef Ziegler is fully
14 competent and understands the proceedings before him. I also
15 find he's capable of waiving his right to appear before a
16 United States District Judge in order to enter his guilty plea.
17 And I, therefore, accept the consent form, which I have now
18 signed and is now part of the Court record. The consent form
19 will be marked as Court Exhibit 3 and will remain in the court
20 file.

21 (Court Exhibit 3 was marked)

22 THE COURT: Mr. Ziegler, I've been informed that you
23 wish to change your plea and to enter a plea of guilty as to
24 certain charges. Is that correct?

25 THE DEFENDANT: Yes.

1 THE COURT: Before deciding whether to accept your
2 guilty plea, I'm going to ask you certain questions. It's very
3 important that you answer these questions honestly and
4 completely. The purpose of these proceedings is to make sure
5 that you understand your rights, to decide whether you're
6 pleading guilty of your own free will, and to make sure that
7 you're pleading guilty because you are guilty and not for some
8 other reason.

9 Do you understand all this?

10 THE DEFENDANT: Yes.

11 THE COURT: If you don't understand any of the
12 questions or if you want at any time to consult with your
13 lawyer, please let me know, because it's important that you
14 understand every question before you answer it.

15 Do you understand that?

16 THE DEFENDANT: Yes.

17 THE COURT: So I have before me a copy of the
18 superseding information containing the charges against you.
19 It's a four-count information. Each of the counts, Counts One
20 through Four charges you with bank robbery in violation of
21 Title 18 United States Code § 2113(a) and (d).

22 Have you seen a copy of this superseding information?

23 THE DEFENDANT: Yes.

24 THE COURT: Have you read it?

25 THE DEFENDANT: Yes.

1 THE COURT: Do you understand what it says?

2 THE DEFENDANT: Yes.

3 THE COURT: Do you want me to read it in open court?

4 THE DEFENDANT: No need to. If you want.

5 THE COURT: It's up to you. You have a right to have
6 me read it if you want me to. But if you don't, if you don't
7 need it read, you can just tell me that.

8 THE DEFENDANT: No, there's no need for that.

9 THE COURT: Thank you.

10 Have you had time to talk to your attorney about
11 these charges and how you wish to plead?

12 THE DEFENDANT: Yes.

13 THE COURT: Have you discussed with your attorney the
14 charges against you, including the charges you intend to plead
15 guilty to, as well as any other charges the government may have
16 made in this case?

17 THE DEFENDANT: Yes.

18 THE COURT: Has your attorney told you the
19 consequences of pleading guilty?

20 THE DEFENDANT: Yes.

21 THE COURT: Are you satisfied with your attorney's
22 representation of you?

23 THE DEFENDANT: Yes.

24 THE COURT: Have you told your attorney everything
25 you know about this case?

1 THE DEFENDANT: Yes.

2 THE COURT: So I have a plea agreement in this case
3 dated November 19, 2020.

4 Ms. Heavey, do you have the original plea agreement?

5 MS. HEAVEY: I have the closest to an original given
6 the electronic signing that's been done.

7 THE COURT: Okay. So that's going to be marked as a
8 government exhibit and going to remain in the custody of the
9 government's attorney. Do you understand that?

10 MS. HEAVEY: Yes.

11 THE COURT: Ms. Hummel, will you please have the
12 defendant go over the signatures and counsel go over the
13 signatures on the last page of the plea agreement.

14 THE DEPUTY CLERK: Yes.

15 Mr. Ziegler, I have before me the plea agreement
16 which is dated November 19, 2020, and on page 7 of this
17 agreement I have your signature put on this agreement by your
18 attorneys and dated 12/7/2020, and the signature of your
19 attorney dated the same date, 12/7/2020.

20 Did you give your attorneys permission to sign this
21 agreement on your behalf?

22 THE DEFENDANT: Yes.

23 THE DEPUTY CLERK: And before giving them that
24 permission, did you have a chance to read and review this
25 agreement with your attorney?

1 THE DEFENDANT: Yes.

2 THE DEPUTY CLERK: Thank you.

3 THE COURT: Thank you, Ms. Hummel.

4 Counsel, did you review each and every part of this
5 agreement with your client?

6 MS. NECHELES: Yes, your Honor.

7 THE COURT: Mr. Ziegler, are you satisfied that you
8 understand the entire plea agreement which your lawyer has
9 reviewed with you?

10 THE DEFENDANT: Yes.

11 THE COURT: Do you have any questions either for your
12 lawyer or for me about what this plea agreement says?

13 THE DEFENDANT: No.

14 THE COURT: Does this plea agreement contain the
15 complete understanding between you, your lawyers, and the
16 government in connection with this case?

17 THE DEFENDANT: Yeah.

18 THE COURT: Do you understand that anything which is
19 not set forth in the plea agreement or which is not told to me
20 at this time on the record will not be binding on the outcome
21 of the case?

22 THE DEFENDANT: Yes.

23 THE COURT: Ms. Heavey, is there anything beyond the
24 written plea agreement the Court should be aware of?

25 MS. HEAVEY: No, your Honor.

1 THE COURT: Counsel, is there any other agreement the
2 Court should know about?

3 MS. NECHELES: No, your Honor.

4 THE COURT: I do have a consent preliminary order of
5 forfeiture as to specific property/money in agreement. That's
6 an attachment to the plea agreement?

7 MS. HEAVEY: Yes, your Honor.

8 THE COURT: Okay. Thank you.

9 Mr. Ziegler, did you give your attorneys permission
10 to sign this plea agreement freely and voluntarily?

11 THE DEFENDANT: Yes.

12 THE COURT: Did anyone force you or coerce you or
13 threaten you or promise you anything other than what's set
14 forth -- what is set forth in the written plea agreement in
15 order to get you to sign the plea agreement?

16 THE DEFENDANT: No.

17 THE COURT: So if you're convicted of the charges
18 contained in the felony superseding information, either after
19 trial or by a plea of guilty, you would be subject on each
20 count to a maximum term of imprisonment of 25 years, a maximum
21 term of supervised release of five years, a maximum fine
22 pursuant to Title 18 United States Code § 3571 of the greatest
23 of \$250,000, twice the gross pecuniary gain derived from the
24 offense, or twice the gross pecuniary loss to persons other
25 than you resulting from the offense, and a \$100 mandatory

1 special assessment.

2 Do you understand that?

3 THE DEFENDANT: Yes.

4 THE COURT: So that would be what you would be
5 subject to to each of the four counts. So that means the total
6 maximum term of imprisonment on Counts One through Four is 100
7 years' imprisonment. Do you understand that?

8 THE DEFENDANT: Yes.

9 THE COURT: If you are sentenced to a term of
10 imprisonment, even if you are sentenced to the maximum term of
11 imprisonment, and if you're also sentenced to a term of
12 supervised release, and if you then violate the conditions of
13 supervised release, you could be sentenced to an additional
14 term of imprisonment for violating the terms of your supervised
15 release, which, in this case, would be an additional term of
16 three years.

17 Ms. Heavey, this is a B felony, right?

18 MS. HEAVEY: I believe, your Honor. I can
19 double-check that.

20 THE COURT: Please do.

21 MS. HEAVEY: Yes, your Honor.

22 THE COURT: So as a B felony, you'd be subject to an
23 additional term of imprisonment, if you violated your term of
24 supervised release, for three years.

25 In addition, Mr. Zigler, if you violate the

1 conditions of your supervised release, you would not receive
2 credit for any time already served in prison or for time served
3 on supervised release.

4 Do you understand that?

5 THE DEFENDANT: Yes.

6 THE COURT: Under this plea agreement you are also
7 waiving any defense with respect to venue in Count Four.

8 Do you understand that?

9 THE DEFENDANT: Yeah.

10 THE COURT: You're also subject to the possibility of
11 an order of forfeiture or restitution in this case. And under
12 this plea agreement you're admitting to the forfeiture
13 allegation with respect to Counts One through Four of the
14 superseding information and are agreeing to forfeit to the
15 United States pursuant to Title 18 United States Code §
16 981(a)(1)(C) and Title 28 United States Code § 2461(c) a sum of
17 money equal to \$233,150 representing proceeds traceable to the
18 commission of this offense, and all right, title, and interest
19 of the defendant in the following specific property: \$63,450
20 that the law enforcement seized from your residence in Airmont,
21 New York on or about November 26, 2019.

22 Do you understand that?

23 THE DEFENDANT: Yes.

24 THE COURT: You're also agreeing under this plea
25 agreement to make restitution in the amount of \$233,150 in

1 accordance with 18 U.S.C. § 3663, 3663(a) and 3664.

2 Do you understand that?

3 THE DEFENDANT: Yes.

4 THE COURT: Ms. Heavey, any other forfeiture or
5 restitution that Mr. Ziegler may be subject to?

6 MS. HEAVEY: No, your Honor.

7 THE COURT: Thank you.

8 So Mr. Ziegler, do you understand that these are the
9 possible sentences that could be imposed following a plea of
10 guilty in this matter?

11 THE DEFENDANT: Yes.

12 THE COURT: I believe you said you were a United
13 States citizen; is that correct?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Do you understand that you are pleading
16 guilty to a felony offense and that such an adjudication may
17 deprive you of certain valuable civil rights which may include
18 the right to vote, the right to hold public office, the right
19 to serve on a jury, the right to possess any type of firearm
20 including rifles and shotguns, the right to be considered for
21 certain types of employment, or to be bonded, to serve in the
22 United States military, and the right to possess or obtain
23 certain government issued-licenses, including licenses that may
24 be required in certain professions and occupations.

25 Do you understand that?

1 THE DEFENDANT: Yes.

2 THE COURT: So do you understand these are all the
3 possible legal consequences of a guilty plea?

4 THE DEFENDANT: Yes.

5 THE COURT: Do you understand that the United States
6 Sentencing Commission has issued guidelines for judges to
7 follow in determining the appropriate sentence in a criminal
8 case?

9 THE DEFENDANT: Yes.

10 THE COURT: Do you understand that these guidelines
11 are not mandatory, but they must be considered by the Court
12 along with other factors listed at 18 U.S.C. § 3553 when the
13 judge determines the appropriate sentence to impose, including
14 possible departures from the guidelines?

15 THE DEFENDANT: Yes.

16 THE COURT: Have you and your attorney talked about
17 how the sentencing guidelines would be calculated in your case?

18 THE DEFENDANT: Yes.

19 THE COURT: The plea agreement in this case sets
20 forth a stipulated sentencing range of 78 to 97 months'
21 imprisonment, and a stipulated fine range of 25,000 to
22 \$250,000. Do you understand that this is simply an
23 understanding between you and your lawyer and the lawyer for
24 the government and that it is not binding on the district judge
25 when he imposes sentence?

1 THE DEFENDANT: Yes.

2 THE COURT: Do you understand that the district judge
3 will consider the guidelines, but will impose a sentence in
4 accordance with the statute, which, in this case, means that
5 the prison term will be not for more than 100 years in prison?

6 Do you understand that?

7 THE DEFENDANT: Yes.

8 THE COURT: Do you understand the Court will not be
9 able to determine the appropriate sentence until after the
10 presentence report has been prepared, until you and your
11 attorney, as well as the government, have had an opportunity to
12 challenge the facts reported in the presentence report, as well
13 as the calculation of the sentencing guideline range, and any
14 sentence recommendation in that report?

15 THE DEFENDANT: Yes.

16 THE COURT: Do you also understand that if there are
17 any objections to the presentence report, that those objections
18 will be ruled on by the Court and, if necessary, a hearing will
19 be held to determine what information is relevant to the
20 Court's determination of a sentence?

21 THE DEFENDANT: Yes.

22 THE COURT: I want to go over what appeal rights
23 you're giving up by entering this plea, okay?

24 THE DEFENDANT: Okay.

25 THE COURT: You're agreeing not to file a direct

1 appeal nor bring a collateral challenge, including but not
2 limited to an application under Title 28 United States Code
3 § 2255 and/or § 2241 of any evidence within or below the
4 stipulated guideline range of 78 to 97 months' imprisonment,
5 and the government will not appeal any sentence within or above
6 the stipulated guideline range.

7 Do you understand that?

8 THE DEFENDANT: Yes.

9 THE COURT: You're agreeing not to appeal or bring a
10 collateral challenge of any term of supervised release that is
11 less than or equal to the statutory maximum.

12 Do you understand that?

13 THE DEFENDANT: Yes.

14 THE COURT: You're agreeing not to appeal or bring a
15 collateral challenge of any fine that is less than or equal to
16 \$250,000, and the government agrees not to appeal any fine --
17 not to appeal or bring a collateral challenge of any fine that
18 is greater than or equal to \$25,000.

19 Do you understand that?

20 THE DEFENDANT: Yeah.

21 THE COURT: You're also agreeing not to appeal or
22 bring a collateral challenge of any forfeiture or restitution
23 that is less than or equal to \$233,550, and the government
24 agrees not to appeal or bring a collateral challenge of any
25 forfeiture or restitution that is greater than or equal to

1 \$233,550.

2 Do you understand that?

3 THE DEFENDANT: Yeah.

4 THE COURT: By entering this guilty plea,
5 Mr. Ziegler, you're waiving any and all right to withdraw your
6 plea or to attack your conviction, either on direct appeal or
7 collaterally, on the ground that the government has failed to
8 produce any discovery material, Jencks' Act material,
9 exculpatory material pursuant to *Brady v. Maryland* under the
10 information establishing your factual innocence, or impeachment
11 material pursuant to *Giglio v. United States* that has not
12 already been produced as of the date of this signing of this
13 agreement.

14 Do you understand that?

15 THE DEFENDANT: Yes.

16 THE COURT: Do you understand, Mr. Ziegler, that if
17 you disagree with the Court's sentencing decision, that will
18 not give you a basis for withdrawing your plea of guilty?

19 THE DEFENDANT: Yeah.

20 THE COURT: Do you also understand that parole has
21 been abolished and if you are sentenced to a term of
22 imprisonment you will not be eligible for early release on
23 parole?

24 THE DEFENDANT: Yes.

25 THE COURT: Do you understand that you do not have to

1 plead guilty and you have an absolute right to plead not guilty
2 and to have the matter go to trial by judge or by jury?

3 THE DEFENDANT: Yes.

4 THE COURT: Do you understand that if you choose to
5 plead not guilty, you are entitled to have a speedy and public
6 trial of your case?

7 THE DEFENDANT: Yes.

8 THE COURT: Do you understand that at any trial of
9 this matter you would be entitled to the presumption of
10 innocence, and that presumption would remain with you until the
11 government proves each and every element of the crime charged
12 beyond a reasonable doubt to the satisfaction of a judge if
13 it's a judge trial, or to the unanimous satisfaction of the
14 jury if it's a jury trial?

15 Do you understand that?

16 THE DEFENDANT: Yes.

17 THE COURT: At such trial, Mr. Ziegler, you would
18 have the right, with the assistance of your attorney, to
19 confront and cross-examine the witnesses against you. You
20 would have the right to call witnesses to testify for you and
21 to have subpoenas issued to compel witnesses to give testimony.
22 You would also have the right to testify at your trial but you
23 could not be forced to testify. If you decide not to testify,
24 your decision to remain silent could not be held against you in
25 any way.

1 Do you understand that?

2 THE DEFENDANT: Yes.

3 THE COURT: At your trial you would also have the
4 right, which I've already mentioned, to the assistance of an
5 attorney and to have an attorney appointed to represent you if
6 you could not afford counsel.

7 Do you understand that?

8 THE DEFENDANT: Yes.

9 THE COURT: Do you understand that if you plead
10 guilty to the charges in this felony superseding information,
11 that you would give up your right to trial, and except for the
12 right to counsel, you would give up all the other rights which
13 I've explained to you here?

14 THE DEFENDANT: Yes.

15 THE COURT: Is there anything else, Counsel, that you
16 would like me to go over in the plea agreement with
17 Mr. Ziegler?

18 MS. NECHELES: Nothing for the defense, your Honor.

19 MS. HEAVEY: Nothing from the government, your Honor.
20 Thank you.

21 THE COURT: Thank you.

22 Mr. Ziegler, have you clearly heard and understood
23 everything I've said to you?

24 THE DEFENDANT: Yeah.

25 THE COURT: Do you have any questions for me or for

1 your attorney about anything I've said or about anything I've
2 asked you?

3 THE DEFENDANT: No.

4 THE COURT: Okay. Ms. Heavey, if you could please
5 tell me what the elements of the offense are and what the
6 government is prepared to prove at trial in order to establish
7 those elements.

8 MS. HEAVEY: Yes, your Honor.

9 First, with respect to the elements for all four
10 counts, the government would have to prove at trial beyond a
11 reasonable doubt: First, that the defendant stole money or
12 other things of value belonging to or in the custody, care, or
13 possession of a bank, credit union, or savings and loan
14 association whose deposits were federally insured; second, that
15 the defendant took or attempted to take the money or any other
16 thing of value from a person or in the presence of another;
17 third, that the defendant accomplished the taking by force and
18 violence or intimidation; fourth, that the defendant acted
19 unlawfully, willingly and -- willfully and knowingly; and
20 finally, with respect to § 2113(d), that in committing the
21 offense, the defendant assaulted another person or put in
22 jeopardy the life of another person by the use of a dangerous
23 weapon or device.

24 The government would also have to prove by a
25 preponderance of the evidence that venue in the Southern

1 District of New York was proper, meaning that the bank -- in
2 this case the bank was located in the Southern District of New
3 York.

4 The evidence that the government would use to prove
5 these elements beyond a reasonable doubt include: Surveillance
6 footage from the banks; testimony from employees and customers
7 who were present at the banks; publicly available information
8 from the FDIC regarding the bank's status as federally insured;
9 testimony from law enforcement officers who responded to the
10 scene and investigated the robberies, including testimony
11 regarding how law enforcement was able to identify one of the
12 vehicles involved in the robberies and connect it to the
13 defendant; evidence obtained in connection with the search of
14 the defendant's residence and storage facility, which included
15 over \$63,000 in cash, including approximately \$2500 cash that
16 was wrapped in money ties labeled with the name of one of the
17 victim banks; a BB gun resembling a device used in connection
18 with a robbery; a pocket knife resembling that used in several
19 other robberies; a helmet resembling that used in connection
20 with one of the robberies; cell site data and search
21 information from the defendant's cell phone which placed him in
22 the vicinity of the robberies in the days leading up to the
23 robberies as well as around the time of the robberies; license
24 plate reader reports from cars observed in connection with the
25 robberies; and subpoena returns from car rental companies and

1 storage facilities.

2 And all of that would show that on or about January
3 24, 2019 and June 25, 2019, the defendant stole money from
4 banks, whose deposits were federally insured, by force and
5 violence and intimidation and by assaulting another person with
6 a dangerous weapon or device when he told employees that he had
7 a bomb, displayed what appeared to be parts of a bomb, demanded
8 that employees turn over money in the bank's custody, and stole
9 that money from the banks.

10 On or about October 29, 2019 the defendant stole
11 money from a bank, whose deposits were federally insured, by
12 force and violence and intimidation, and by assaulting another
13 person with a dangerous weapon or device when he displayed what
14 appeared to be a firearm, demanded that employees turn over
15 money in the bank's custody, and stole money from the bank.

16 And on or about April 17, 2019 the defendant stole
17 money from a bank, whose deposits were federally insured, by
18 force and violence and intimidation, and by assaulting another
19 person when he displayed a device that appeared to be a bomb,
20 demanded that employees turn over money in the bank's custody,
21 and stole money from the bank.

22 And with respect to venue, the government would show
23 that the banks that are subject to the first three counts were
24 located in Dutchess and Rockland Counties, which are in the
25 Southern District of New York, and the fourth bank, which is

1 the subject of Count Four, was located in New Jersey. And the
2 defendant is agreeing to waive venue with respect to that count
3 as stipulated in the plea agreement.

4 And all together the defendant stole approximately
5 \$233,150.

6 THE COURT: Thank you, Ms. Heavey.

7 So Mr. Ziegler, did you hear what AUSA Heavey said?

8 THE DEFENDANT: Yes.

9 THE COURT: At this time how do you wish to plead to
10 the charges?

11 THE DEFENDANT: Guilty.

12 THE COURT: Has anyone threatened you or coerced you
13 or pressured you improperly in order to get you to plead guilty
14 to these charges?

15 THE DEFENDANT: No.

16 THE COURT: Has anyone made any promises to you other
17 than what's set forth in the plea agreement in order to induce
18 you to plead guilty?

19 THE DEFENDANT: No.

20 THE COURT: Has anyone made any specific promises to
21 you about what the sentence of the Court will be?

22 THE DEFENDANT: No.

23 THE COURT: Mr. Ziegler, can you tell me in your own
24 words what you did to commit these crimes.

25 THE DEFENDANT: On January 24, 2019, I entered the

1 bank in Pomona, New York, and by displaying a device I falsely
2 claimed was a bomb to the manager and received cash from the
3 bank. And on June 25, 2019 I entered a bank in Wappingers
4 Falls, New York, and by displaying a device falsely claimed was
5 a bomb, demanded and received cash from the bank. And on
6 October 29, 2019 I entered a bank in Fishkill, New York, and by
7 displaying and -- and by displaying a weapon that was, in fact,
8 a BB gun, I demanded and received cash from the bank. And on
9 April 17, 2019 I entered a bank in Park Ridge, New Jersey, and
10 by displaying a device I falsely claimed that was a bomb and
11 demanded and received cash from the bank. All four banks were
12 FDIC insured.

13 THE COURT: And how much cash in total did you
14 receive through this threat and intimidation? The government
15 says 233,150. Is that accurate?

16 THE DEFENDANT: Yeah.

17 THE COURT: And in each of these robberies, you
18 intimidated the people by using devices that you had led them
19 to believe in three cases was a bomb, and in the other case was
20 a gun?

21 THE DEFENDANT: Yeah.

22 THE COURT: Did you commit these acts knowingly and
23 willfully?

24 THE DEFENDANT: Yeah.

25 THE COURT: Did you know it was against the law to do

1 what you were doing at the time that you did it?

2 THE DEFENDANT: Yeah.

3 THE COURT: Is there anything else which either
4 counsel believes the Court needs to elicit from the defendant
5 before making the recommendation contemplated by Rule 11 of the
6 Federal Rules of Criminal Procedure?

7 MS. HEAVEY: Nothing from the government, your Honor.
8 Thank you.

9 MS. NECHELES: Nothing for the defense, your Honor.
10 Thank you.

11 THE COURT: And Ms. Necheles, do you know of any
12 reason why the Court should not recommend acceptance of your
13 client's plea of guilty in this matter?

14 MS. NECHELES: No, your Honor.

15 THE COURT: And Ms. Heavey, do you know of any reason
16 why the Court should not recommend acceptance of the plea?

17 MS. HEAVEY: No, your Honor.

18 THE COURT: Mr. Ziegler, in light of everything
19 that's been said here today, is it still your wish to plead
20 guilty to the charges in the felony superseding information?

21 THE DEFENDANT: Yes.

22 THE COURT: On the basis of the allocution and the
23 responses to my questions, I find that the defendant is fully
24 competent and capable of entering an informed plea.

25 I am satisfied, Mr. Ziegler, that you understand your

1 rights, including your right to go to trial, that you are aware
2 of the consequences of your plea, including the sentence that
3 may be imposed.

4 Based on this plea allocution, I find the plea is
5 knowing and voluntary and supported by independent factual
6 basis for each and every element of the crime charged.
7 Accordingly, I respectfully report and recommend to Judge Román
8 that the plea be accepted and that the defendant be adjudged
9 guilty of the offense charged in the felony superseding
10 information.

11 I direct that a presentence investigation be
12 conducted by the United States Department of Probation and that
13 a presentence report will be prepared. Within 14 days from
14 today, Mr. Ziegler, with the help of your counsel, you need to
15 be interviewed by the department of probation.

16 Counsel, you should contact the department of
17 probation. I believe they arrange ways to do this remotely.

18 Mr. Ziegler, when you are interviewed by the
19 representative from the department of probation, you must be
20 fully honest and truthful during that interview, because if it
21 comes to the Court's attention that you provided false,
22 incomplete, or misleading information, that may be held against
23 you at the time of sentencing.

24 Do you understand that?

25 THE DEFENDANT: Yes.

1 THE COURT: And Ms. Heavey, the prosecution case
2 summary is to come to the Court -- to be given to the probation
3 department no later than 14 days from today, so that's December
4 22, 2020.

5 I'm also going to ask that the court reporter provide
6 a transcript of these proceedings within 30 days setting forth
7 my report and recommendation to Judge Román. The transcript is
8 to come to me first for review.

9 Ms. Hummel, do we have a sentencing date?

10 THE DEPUTY CLERK: Yes, Judge. Judge Román set this
11 down for sentencing on March 10, 2021 at 11:00 a.m., or an
12 alternate date of March 12, 2021 at 11:00 a.m.

13 THE COURT: Okay. So please contact Judge Román's
14 chambers to confirm the date and time of the sentencing.

15 Is there anything further we need to do here today?

16 MS. HEAVEY: Nothing from the government, your Honor.
17 Thank you.

18 MS. NECHELES: Nothing from the defense, your Honor.
19 Thank you.

20 THE COURT: Thank you.

21 I wish everyone good health.

22 And also good luck to you, Mr. Ziegler.

23 Have a good day, everyone.

24

25

1 CERTIFICATE: I hereby certify that the foregoing is a true and
2 accurate transcript, to the best of my skill and ability, from
my stenographic notes of this proceeding.

3 

4 Pamela L. Grimaldi, RPR, CRR, CLR
5 Official Court Reporter, USDC, SDNY

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